

DEPUTY COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

OCT 10 1980

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in response to your letter dated July 31, 1980 in which you appealed the Service's decision to deny you access to certain documents under the Freedom of Information Act (FOIA). This response addresses only Service tax information in Department of Justice files and no other information you may have requested from them.

We are denying your request in its entirety.

I.R.C. § 6103(a) prohibits disclosure of returns and return information unless disclosure is specifically authorized by a provision of the Internal Revenue Code. The documents being withheld would reveal tax information concerning third party taxpayers. These documents contain no segregable information.

In your appeal you put forth three reasons why certain documents alleged to be in existence should be released. Two of these reasons: "the public interest" and the death of a taxpayer are not sufficient to allow disclosure under the Code. Prior public disclosure of documents may be enough to allow their release. A brief examination of the Warren Report revealed that Jack Ruby's returns have been disclosed (V. 23 p. 202-239). Our brief search did not reveal that any of the documents being withheld have been so disclosed however.

Since no provision of the Code authorizes the release of this information to you we are prohibited by section 6103(a) from disclosing it.

While your request was made under the FOIA, several recent judicial decisions have held that section 6103 is the sole means of gaining access to tax information. See, e.g., Zale Corp. v. IRS, 481 F. Supp. 486 (D.D.C. 1979). Accordingly, we assert section 6103(a) as an independent basis for denying you access to the tax information here at issue. In the alternative, such tax information is exempt from disclosure on the basis of FOIA subsection (b)(3). That provision holds the FOIA inapplicable to matters that are "specifically exempted from disclosure by statute . . . , provided that such statute (A) requires that the matters be withheld from the public in such manner as to leave no discretion on the issue" Section 6103(a) has been held to be a qualifying statute under FOIA subsection (b)(3). See Fruehauf Corp. v. IRS, 566 F.2d 574 (6th Cir. 1977). Accordingly, subsection (b)(3), as it incorporates I.R.C. § 6103(a), is also asserted to deny you access to all withheld tax information pertaining to third parties.

The FOIA requires that we advise you of the judicial remedies available under that Act. You may file a complaint in the United States District Court for the district in which the complainant resides, or has a principal place of business, or in which the agency records are located, or in the District of Columbia. The documents at issue are located in Washington, D.C. You should be aware, however, that based on the rationale set forth in Zale Corp., supra, in cases seeking access to return information the Service is arguing that the court is without subject matter jurisdiction under the FOIA.

Very truly yours,

Will E. Nelson